PERPETUAL LICENSE AGREEMENT

This **PERPETUAL LICENSE AGREEMENT** ("Agreement") is entered into by and between Open Counter Enterprises, Inc., a _____ corporation with offices at _____ ("OpenCounter") and The City of Boston ("Customer"), as of this __ day of April, 2015 (the "Effective Date").

1.   Definitions. Capitalized terms used herein will have the meaning set forth where such terms are first underlined, provided that capitalized terms used but not defined herein, will have the meanings set forth in the Agreement.

2.   Perpetual License. At the expiration of the original two (2) or optional three (3) year term of that certain agreement between Accela, Inc. and Customer entered into as of even date herewith in response to DoIT-EV00001595 (the "Prime Contract"), unless otherwise instructed by Customer in writing, OpenCounter shall deliver to Customer the software used to provide the Hosted Service provided to Customer under the Prime Contract (the "Software"), and provide reasonable assistance in the implementation of the same at professional services rates set forth in the Statement of Work to the Prime Contract.   Upon delivery of the Software, OpenCounter hereby grants to Customer, a non-exclusive, non-transferable, perpetual right and license, without the right to grant or authorize sublicenses, except as provided herein to use the Software for the purpose of providing Permitting Services. The license granted to Customer includes other government entities within the City of Boston with a primary charter related to the operation of the City of Boston (collectively, "Related Entities"), their employees, agents, and contractors as needed in order to exercise its authority to process licenses and permits, and the right to license and allow Permit Applicants to use the Software for the purpose of providing information to Customer regarding applications for permits or licenses the issuance of which are with Customer's or the Related Entities jurisdiction. "Permitting Services" means online services that allow persons and entities to apply for and, if applicable requirements are met by the applicant, obtain from Customer or the Related Entities those permits, licenses or other permissions for which the Software has been configured.

3.   Reservation of Rights; Restrictions. As between OpenCounter and Customer, OpenCounter owns all right title and interest in and to the Software and any derivative works thereof, and except as expressly set forth in Section 2 of this Agreement, no other license to the Software is granted to Customer by implication, estoppel or otherwise. Customer agrees not to: (i) prepare derivative works from, modify, copy or use the Software in any manner except as expressly permitted in this Agreement or applicable law; (ii) reverse engineer or decompile, decrypt, disassemble or otherwise reduce any Software or any portion thereof to human-readable form, except and only to the extent any such restriction is prohibited by applicable law,, (iii) transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Software in whole or in part to any third party except as expressly permitted in this Agreement; or (iv) alter or remove any proprietary notices in the Software.

4.   Open Source Software and Additional Services.

(a)   Customer understands and agrees that the Software may contain or be provided with open source libraries, components, utilities and other open source software (collectively, "Open Source Software"), which Open Source Software may have applicable license terms as identified on Exhibit A hereto, or otherwise provided with the Software or Documentation. Notwithstanding anything to the contrary herein, use of the Open Source Software shall be subject to the license terms and conditions applicable to such Open Source Software, to the extent required by the applicable licensor (which terms shall not restrict the license rights granted to Customer hereunder, but may contain additional rights).

(b)   Customer understands and agrees that the use of the Software to replicate the Hosted Service provided under the Prime Contract may require the use of additional services that communicate with, but are not part of, the Software. A list of all such additional services used by OpenCounter to provide the Hosted Service as of the Effective Date is included in Exhibit A hereto. Customer further understands and agrees that (i) the list of such additional services may change during the term of the Prime Contract, provided OpenCounter will update such list from time to time by providing written notice (e-mail sufficient) to Customer of any such updates, (ii) Customer will be solely responsible for securing the right to use, at Customer's expense, any such additional services, (iii) OpenCounter makes no

representation or warranty regarding the availability, cost or effectiveness of any such additional services and (iv) Customer's ability to secure the use of and use of such additional services will be entirely at Customer's own risk and expense.

5.   **Warranty Disclaimer**.   THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND OPENCOUNTER AND ITS LICENSORS MAKE NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE SOFTWARE OR DOCUMENTATION PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, OPENCOUNTER AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGMENT WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION PROVIDED BY OPENCOUNTER HEREUNDER, AND WITH RESPECT TO THE USE OF THE FOREGOING. FURTHER, OPENCOUNTER DOES NOT WARRANT RESULTS OF USE OR THAT THE SOFTWARE WILL BE ERROR FREE OR THAT THE CUSTOMER'S USE OF THE SOFTWARE WILL BE UNINTERRUPTED.

6.   **Limitation of Liability**.   IN NO EVENT SHALL OPENCOUNTER OR ITS LICENSORS BE LIABLE FOR ANY DIRECT OR INDIRECT DAMAGES UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY DAMGES ARISING FROM LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECITON WITH OR ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF OPENCOUNTER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.   **Assignment**.   Customer may not assign this Agreement, in whole or in part, without the prior written consent of OpenCounter, which consent will not be unreasonably withheld. Notwithstanding the provisions of this paragraph, Customer may assign this Agreement to a surviving government entity that assumes the Customer's functions as it relates to the use of the Software, subject to thirty (30) days prior notice to OpenCounter. Any assignment in violation of this Section 6 shall be void, *ab initio*, and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by the parties and their respective successors and assigns.

8.   **Confidential Information**.

Definitions. "Disclosing Party" and "Recipient" refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. OpenCounter or Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personnel information, Software, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this Section: (i) information which is in Recipient's possession prior to disclosure by Disclosing Party; (ii) information which is available to Recipient from a third party without violation of this Agreement or Disclosing Party's intellectual property rights; (iii) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party; (iv) information which is subpoenaed by governmental or judicial authority; and (v) information subject to disclosure pursuant to a state's public records laws**.**

CONFIDENTIALITY OBLIGATIONS: DURING THE CONFIDENTIALITY TERM, RECIPIENT WILL PROTECT THE CONFIDENTIALITY OF CONFIDENTIAL INFORMATION USING THE SAME DEGREE OF CARE THAT IT USES TO PROTECT ITS OWN INFORMATION OF SIMILAR IMPORTANCE, BUT WILL IN ANY CASE USE NO LESS THAN A REASONABLE DEGREE OF CARE TO PROTECT CONFIDENTIAL INFORMATION. RECIPIENT WILL NOT DIRECTLY OR INDIRECTLY DISCLOSE CONFIDENTIAL INFORMATION OR ANY PART THEREOF TO ANY THIRD PARTY WITHOUT DISCLOSING PARTY'S ADVANCE EXPRESS WRITTEN AUTHORIZATION TO DO SO. RECIPIENT MAY DISCLOSE CONFIDENTIAL INFORMATION ONLY TO ITS EMPLOYEES OR AGENTS UNDER ITS CONTROL AND DIRECTION IN THE NORMAL COURSE OF ITS BUSINESS AND ONLY ON A NEED-TO-KNOW BASIS.   IN RESPONDING TO A REQUEST FOR CONFIDENTIAL INFORMATION, RECIPIENT WILL COOPERATE WITH DISCLOSING PARTY, IN A TIMELY FASHION AND IN A MANNER NOT INCONSISTENT WITH APPLICABLE LAWS IF A PUBLIC DISCLOSURE REQUEST IS MADE TO VIEW OPENCOUNTER'S CONFIDENTIAL INFORMATION, THE CUSTOMER WILL NOTIFY OPENCOUNTER OF THE REQUEST AND OF THE DATE THAT SUCH RECORDS WILL BE RELEASED TO THE REQUESTER IF THEY ARE DEEMED PUBLIC RECORDS SUBJECT TO DISCLOSURE, UNLESS OPENCOUNTER OBTAINS A COURT ORDER FROM A COURT OF COMPETENT JURISDICTION ENJOINING THAT DISCLOSURE.

9.   Term and Termination. This Agreement will commence on the Effective Date, provided that, for the avoidance of doubt, the license granted herein shall not become effective prior to the expiration of the original two or optional three (3) year term of the Prime Contract, but shall thereafter continue in perpetuity unless earlier terminated in accordance with this Section 9. Customer may terminate this Agreement at any time, for any reason or no reason. OpenCounter may terminate this Agreement upon sixty (60) days' prior written notice to Customer for any material breach of the terms hereof that is not cured by Customer within such sixty (60) day period. For the avoidance of doubt, Customer shall not be entitled to a refund of any amounts paid under the Prime Contract as a result of any termination of this Agreement. Upon any lawful termination of this Agreement by OpenCounter, Customer shall be entitled to a six month limited term license to continue its use of the Software in accordance with the terms hereof, in order to allow the Customer to transition to a new methodology of processing permits and shall thereafter immediately cease to use the Software and shall delete and destroy any and all copies thereof in Customer's possession as under Customer's control,.

10.   Governing Law. This Agreement shall be governed by the laws of Massachusetts, and any actions arising out of this Agreement shall be brought and maintained in a State or federal court in Boston, Massachusetts which shall have exclusive jurisdiction thereof.

11.   Waiver and Modification. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. This Agreement shall not be modified except by a subsequently dated written amendment signed on behalf of OpenCounter and Customer by their duly authorized representatives.

12.   Severability. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

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13.   Entire Agreement. This Agreement completely and exclusively state the entire agreement of the parties regarding its subject matter, and supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter.

OPENCOUNTER ENTERPRISES, INC.   **FOR AND ON BEHALF OF THE CITY OF BOSTON:**

Signature: _____   **Signature: _____**

Name: **Name:_____**
_____
                                                                            Title:_____
Title:_____
                                                                            Date: _____
Date: _____